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## A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

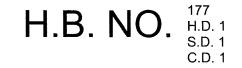
#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that mentally disabled 2 persons need additional protection from sexual predators. Amonq 3 adults who are developmentally disabled, as many as eighty-three 4 per cent of the females and thirty-two per cent of the males are 5 victims of sexual assault. Further, anywhere from fifteen 6 thousand to nineteen thousand people with developmental 7 disabilities are sexually assaulted each year in the United 8 States. Forty per cent of people with developmental disabilities who are victims of sexual violence will experience 9 10 ten or more abusive incidents.

11 The legislature further finds that mentally disabled 12 persons and developmentally disabled persons have limited, if 13 any capacity to give knowing and willing consent to sexual acts. 14 This inability to consent closely parallels the inability of 15 certain minors and prison inmates to consent.

In State v. Buch, 83 Haw. 308, 926 P.2d 599 (1996), the
Hawaii supreme court, citing the Michigan supreme court in

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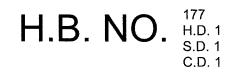
People v. Cash, 419 Mich. 230, 351 N.W.2d 822 (1984), stated
 that:

3 "It is well-established that the Legislature may, pursuant 4 to its police powers, define criminal offenses without requiring 5 proof of a specific criminal intent and so provide that the 6 perpetrator proceed at his [or her] own peril regardless of his 7 [or her] defense of ignorance or of an honest mistake of fact. 8 In the case of statutory rape, such legislation, in the nature 9 of 'strict liability' offenses, has been upheld as a matter of 10 public policy because of the need to protect children[.]"

Just as the legislature in the past extended protection against sexual assault to minors under a certain age, the legislature finds a similar need to extend protection to . mentally disabled persons who similarly lack the capacity to consent to sexual acts.

16 The purpose of this Act is to amend the offenses of sexual 17 assault in the first and third degree perpetrated against a 18 person who is mentally defective to provide that a perpetrator 19 commits the offense if the perpetrator is negligent in not 20 knowing of the mental defect of the victim.

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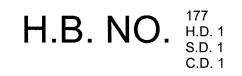
1	SECT	ION 2. Section 707-730, Hawaii Revised Statutes, is
2	amended b	y amending subsection (1) to read as follows:
3	"(1)	A person commits the offense of sexual assault in the
4	first deg	ree if[+] the person:
5	(a)	[ <del>The person knowingly</del> ] <u>Knowingly</u> subjects another
6		person to an act of sexual penetration by strong
7		compulsion;
8	(b)	[ <del>The person knowingly</del> ] <u>Knowingly</u> engages in sexual
9		penetration with [ <del>another</del> ] <u>a</u> person who is less than
10		fourteen years old;
11	(C)	[ <del>The person knowingly</del> ] <u>Knowingly</u> engages in sexual
12		penetration with a person who is at least
13		fourteen years old but less than sixteen years old;
14		provided that[+] the actor is:
15		(i) [ <del>The person is not</del> ] <u>No</u> less than five years older
16		than the minor; and
17		(ii) [ <del>The person is not</del> ] <u>Not</u> legally married to the
18		minor;
19	(d)	[The person knowingly] Knowingly subjects to sexual
20		penetration [another] a person who is mentally

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1		defective; provided that the actor is negligent in not
2		knowing of the mental defect of the victim; or
3	(e)	[ <del>The person knowingly</del> ] <u>Knowingly</u> subjects to sexual
4		penetration [ <del>another</del> ] <u>a</u> person who is mentally
5		incapacitated or physically helpless as a result of
6		the influence of a substance that the actor knowingly
7		caused to be administered to the other person without
8		the other person's consent.
9	Paragraph	s (b) and (c) shall not be construed to prohibit
10	practitio	ners licensed under chapter 453 or 455 from performing
11	any act w	ithin their respective practices."
12	SECT	ION 3. Section 707-732, Hawaii Revised Statutes, is
13	amended by	y amending subsection (1) to read as follows:
14	"(1)	A person commits the offense of sexual assault in the
15	third deg	ree if[+] the person:
16	(a)	[ <del>The person recklessly</del> ] <u>Recklessly</u> subjects another
17		person to an act of sexual penetration by compulsion;
18	(b)	[ <del>The person knowingly</del> ] <u>Knowingly</u> subjects to sexual
19		contact [ <del>another</del> ] <u>a</u> person who is less than
20		fourteen years old or causes such a person to have
21		sexual contact with the [ <del>person;</del> ] <u>actor;</u>

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1	(c)	[ <del>The person knowingly</del> ] <u>Knowingly</u> engages in sexual
2		contact with a person who is at least fourteen years
3		old but less than sixteen years old or causes [ <del>the</del>
4		minor] such a person to have sexual contact with the
5		[ <del>person;</del> ] <u>actor;</u> provided that[+] <u>the actor is:</u>
6		(i) [The person is not] No less than five years older
7		than the minor; and
8		(ii) [The person is not] Not legally married to the
9		minor;
10	(d)	[ <del>The person knowingly</del> ] <u>Knowingly</u> subjects to sexual
11		contact [ <del>another</del> ] <u>a</u> person who is [ <del>mentally</del>
12		$\frac{\text{defective}_{r}}{\text{mentally incapacitated}[_{r}]}$ or physically
13		helpless, or causes such a person to have sexual
14		contact with the actor;
15	(e)	Knowingly subjects to sexual contact a person who is
16		mentally defective, or causes such a person to have
17		sexual contact with the actor; provided that the actor
18		is negligent in not knowing of the mental defect of
19		the victim;
20	[ <del>-(e)</del> ]	(f) [The person, while] While employed:
21		(i) In a state correctional facility;

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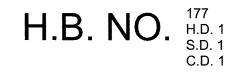
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1	(ii)	By a private company providing services at a
2		correctional facility;
3	(iii)	By a private company providing community-based
4		residential services to persons committed to the
5		director of public safety and having received
6		notice of this statute;
7	(iv)	By a private correctional facility operating in
8		the State [ <del>of Hawaii</del> ]; or
9	(v)	As a law enforcement officer as defined in
10		section [+]710-1000[+],
11	kno	owingly subjects to sexual contact an imprisoned
12	pe	rson, a person confined to a detention facility, a
13	pe	rson committed to the director of public safety, a
14	pe	rson residing in a private correctional facility
15	ope	erating in the State [ <del>of Hawaii</del> ], or a person in
16	Cus	stody, or causes [ <del>the</del> ] <u>such a</u> person to have sexual
17	COI	ntact with the actor; or
18	[ <del>(f)</del> ] <u>(g</u> )	[The person knowingly,] Knowingly, by strong
19	COI	mpulsion, has sexual contact with another person or
20	car	uses another person to have sexual contact with the
21	act	tor.

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1	Paragraphs (b), (c), (d), [ <del>and</del> ] (e) <u>, and (f)</u> shall not be		
2	construed to prohibit practitioners licensed under chapter 453		
3	or 455 from performing any act within their respective		
4	practices; provided [ <del>further</del> ] that paragraph [ <del>(e)(v)</del> ] <u>(f)(v)</u>		
5	shall not be construed to prohibit a law enforcement officer		
6	from performing a lawful search pursuant to a warrant or an		
7	exception to the warrant clause."		
8	SECTION 4. Section 846E-10, Hawaii Revised Statutes, is		
9	amended as follows:		
10	1. By amending subsection (a) to read:		
11	"(a) Tier 3 offenses. A covered offender whose covered		
12	offense is any of the following offenses shall register for life		
13	and, except as provided in subsection (e), may not petition the		
14	court, in a civil proceeding, for termination of registration		
15	requirements:		
16	(1) Any offense set forth in section 707-730(1)(a), (b),		
17	(d), or (e)[7]; 707-731(1)(a) or (b)[7];		
18	707-732(1)(a), (b), or [ <del>(f),</del> ] <u>(g);</u> or 707-733.6;		
19	(2) An offense set forth in section 707-720; provided that		
20	the offense involves kidnapping of a minor by someone		
21	other than a parent;		

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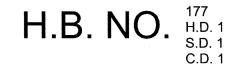
1	(3)	An offense that is an attempt, criminal solicitation,
2		or criminal conspiracy to commit any of the offenses
3		in paragraph (1) or (2);
4	(4)	Any criminal offense that is comparable to one of the
5		offenses in paragraph (1), (2), or (3); or
6	(5)	Any federal, military, out-of-state, tribal, or
7		foreign offense that is comparable to one of the
8		offenses in paragraph (1), (2), or (3)."
9	2.	By amending subsection (d) to read:
10	"(d)	Tier 1 offenses. A covered offender who has
11	maintaine	d a clean record for the previous ten years, excluding
12	any time	the offender was in custody or civilly committed, and
13	who has s	ubstantially complied with the registration
14	requireme	nts of this chapter for the previous ten years, or for
15	the porti	on of that ten years that this chapter has been
16	applicabl	e, and who is not a repeat covered offender may
17	petition	the court, in a civil proceeding, for termination of
18	registrat	ion requirements; provided that the covered offender's
19	most seri	ous covered offense is one of the following:

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1	(1)	Any offense set forth in section 707-732(1)(d) [or],
2		(e), <u>or (f);</u> 707-733(1)(a)[ <sub>7</sub> ]; 707-752[ <sub>7</sub> ]; 707-759[ <sub>7</sub> ];
3		711-1110.9[ $_{\tau}$ ]; 712-1203(1)[ $_{\tau}$ ]; or 712-1209.1;
4	(2)	An offense set forth in section 707-721 or 707-722;
5		provided that the offense involves unlawful
6		imprisonment of a minor by someone other than a
7		parent;
8	(3)	An offense set forth in section 707-757 that includes
9		an intent to promote or facilitate the commission of
10		another covered offense as defined in section 846E-1;
11	(4)	An offense that is an attempt, criminal solicitation,
12		or criminal conspiracy to commit any of the offenses
13		in paragraph (1), (2), or (3);
14	(5)	Any criminal offense that is comparable to one of the
15		offenses in paragraph (1), (2), (3), or (4);
16	(6)	Any federal, military, out-of-state, tribal, or
17		foreign offense that is comparable to one of the
18		offenses in paragraph (1), (2), (3), or (4); or
19	(7)	Any other covered offense that is not specified in
20		subsection (a) or (c) or paragraph (1), (2), (3), (4),
21		(5), or (6)."

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SECTION 5. This Act does not affect rights and duties that
 matured, penalties that were incurred, and proceedings that were
 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.





#### Report Title:

Honolulu Prosecuting Attorney Package; Sexual Assault; Mentally Defective Persons; State of Mind

#### Description:

Amends the offenses of sexual assault in the first and third degree perpetrated against a person who is mentally defective to provide that a perpetrator commits the offense if the perpetrator is negligent in not knowing of the mental defect of the victim. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

